

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY FRANZ, et al.,

Case No. 21-cv-12871

Plaintiffs,

vs.

HON. MARK A. GOLDSMITH

OXFORD COMMUNITY SCHOOL
DISTRICT, et al.,

Defendants.

_____ /

ORDER DENYING PLAINTIFFS' REQUEST FOR TAXABLE COSTS (Dkt. 51)

Plaintiffs filed a motion requesting that the Court (i) grant Plaintiffs leave to file a second amended complaint and (ii) tax costs against Defendants under either E.D. Mich. LR 7.1 (a)(3) or the Court's inherent authority due to Defendants' refusal to concur with Plaintiffs' request to file a second amended complaint (Dkt. 51). The Court granted this motion in part, allowing Plaintiffs to file a second amended complaint (Dkt. 54). For the following reasons, the Court now denies Plaintiffs' request to tax costs against Defendants.¹

Plaintiffs provided Defendants with a copy of their proposed second amended complaint on May 4, 2022. Def. Resp. at 2; Pl. Mot. at 2 (citing 5/4/22 Email (Dkt. 51-2)). This proposed second amended complaint removed one previously named Defendant and added six new Defendants. See 2d Am. Compl. (Dkt. 51-8).² Counsel for Defendants communicated to Plaintiffs

¹ Because oral argument will not aid the Court's decisional process, the motion will be decided based on the parties' briefing. See E.D. Mich. LR 7.1(f)(2); Fed. R. Civ. P. 78(b). In addition to the motion, the briefing includes Defendants' response (Dkt. 52) and Plaintiffs' reply (Dkt. 53).

² Plaintiffs dropped Ryan Moore from the case and added Nicholas Ejak, Shawn Hopkins, Pamela Fine, Jacquelyn Kubina, Allison Karpinski, and Becky Morgan. See 2d Am. Compl.

that they could not concur in the requested relief until they had conferred with all of these parties. Pl. Mot. at 4; Def. Resp. at 3. After discussing the matter with their clients, Defendants provided the requested consent on May 19, 2022. See 5/19/22 Email (Dkt. 52-3) (“We received all of the consents from the named defendants and can now stipulate to the amendment.”).

The Court does not consider it unreasonable that defense counsel deemed it prudent to confer with their seven clients before consenting to those individuals’ involvement in a major lawsuit. Nor was it unreasonable that defense counsel took 11 business days to confirm all clients’ positions. Plaintiffs must accept that some delay is inevitable when they initially sue unnamed individuals and a person ultimately determined to not properly be party to the action, and then later seek all parties’ consent to update their filings.

The Court is also not persuaded by Plaintiffs’ argument that counsel for Defendants should have obtained consent at a May 5, 2022 Oxford School Board meeting. See Pl. Mot. at 5. Even if all seven individuals were present at that meeting—which Plaintiffs do not specifically allege—the Court has no basis for asserting that this setting provided an appropriate occasion for defense counsel to seek consent to the request made one day earlier.

Accordingly, the Court denies Plaintiffs’ request to tax costs (Dkt. 51).

SO ORDERED.

Dated: June 29, 2022
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge